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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 SEAN ROBBINS,) NO. CV 17-0246-AG(E)
12 Plaintiff,)
13 v.) ORDER DISMISSING COMPLAINT
14 LT. J. CORTEZ, et al.,) WITH LEAVE TO AMEND
15 Defendants.)
16)
17

18 For the reasons discussed below, the Complaint is dismissed with
19 leave to amend. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b)(2).
20

21 BACKGROUND
22

23 Plaintiff, a state prisoner proceeding in forma pauperis, brings
24 this civil rights action pursuant to 42 U.S.C. section 1983 against
25 prison officials at the California Men's Colony ("CMC"). The
26 Complaint consists of a form Complaint and a handwritten attachment.
27 Defendants, sued in their individual capacities only, are: (1) CMC
28 Warden E. Valenzuela; (2) Correctional Lieutenant J. Cortez;

1 (3) Correctional Officers C. Sandoval, R. Day, J. Ramirez, J. Busby,
2 E. Clemons; and (4) fictitious "Doe" Defendants. As to the fictitious
3 Defendants, a plaintiff may sue a fictitious defendant if the
4 plaintiff does not know the true identity of the defendant prior to
5 the filing of the complaint. Wakefield v. Thompson, 177 F.3d 1160,
6 1163 (9th Cir. 1999). However, Plaintiff should be aware that, before
7 the United States Marshal can serve process on any fictitiously sued
8 Defendant, Plaintiff must provide identifying information sufficient
9 to permit the service of process, such as the Defendant's full name
10 and address.

11
12 Plaintiff alleges that, on November 18, 2013, Plaintiff
13 assertedly was issued a Rules Violation Report charging Plaintiff with
14 delaying a peace officer in the performance of duties (Complaint, p.
15 5). Plaintiff asserts Eighth Amendment claims arising out of events
16 allegedly occurring during an ensuing December 20, 2013 administrative
17 hearing (id.). Defendant Cortez reportedly presided over this hearing
18 as the Senior Hearing Officer (id.).

19
20 During the hearing, Plaintiff allegedly began to feel pain from
21 sitting handcuffed in a chair and assertedly adjusted himself in an
22 attempt to become more comfortable (id., p. 11). Defendant Sandoval
23 allegedly placed a hand on Plaintiff's shoulders and whispered, "If
24 you move one more time, I'll take your fucking ass to the ground"
25 (id.).

26
27 When Defendant Cortez allegedly inquired whether Plaintiff was
28 read to proceed, Plaintiff assertedly requested permission to return

1 to Plaintiff's cell to retrieve some allegedly pertinent documents
2 (id.). Cortez reportedly denied the request, saying, "You should have
3 brought those things with you." Plaintiff allegedly responded that
4 the escorting officers, Defendants Sandoval and Day, assertedly had
5 not allowed Plaintiff to retrieve the papers from his cell (id.).
6 Cortez allegedly said, "I've seen your name on numerous 602's (inmate
7 grievance) [sic], you're a litigator, this will teach you not to file
8 so many 602's, so on that basis I will deny that request" (id.).
9

10 Plaintiff allegedly again adjusted himself in his chair because
11 of pain, and assertedly told Cortez, "You are violating my due process
12 rights and I'm going to 602 you with a staff misconduct complaint"
13 (id., p. 12). Defendant Cortez then allegedly said to his officers,
14 "Restrain him" (id.).
15

16 Defendants Sandoval and Day allegedly grabbed Plaintiff, and one
17 of them assertedly ordered a "Code One" (id.). Defendant Busby
18 allegedly responded to the "Code One" and ordered Plaintiff placed in
19 leg restraints (id.). Defendant Clemons allegedly stepped on the leg
20 restraints after the restraints had been secured tightly, assertedly
21 inflicting excruciating pain on Plaintiff (id.). Clemons allegedly
22 twisted Plaintiff's wrists upward in a reverse wrist lock position to
23 the point "where it was unbareable [sic]" (id.).
24

25 After Plaintiff allegedly exited the hearing office to be
26 returned to his cell, Defendant Day assertedly held Plaintiff in a
27 "tight reverse wrist lock," allegedly twisting Plaintiff's right
28 middle finger and telling Plaintiff, "If you even move in the

1 slightest, I'll take your ass down" (id.). Day allegedly applied more
2 pressure until Plaintiff assertedly yelled out in pain (id.). Day
3 allegedly continued to apply pressure to Plaintiff's finger until the
4 finger reportedly "snapped" (id.). When Plaintiff assertedly flinched
5 and yelled out in pain, Day allegedly yelled, "He's trying to grab
6 me!" (id., p. 13). Defendants Day, Sandoval, Ramirez, Clemons, Busby
7 and "approximately one to five unknown officers" named as "Doe"
8 Defendants then allegedly tackled Plaintiff (id.). These Defendants
9 allegedly kicked and beat Plaintiff, assertedly punching Plaintiff in
10 the face, torso and extremities (id.). Defendant Day allegedly choked
11 Plaintiff until Plaintiff was unable to breathe (id.). During this
12 time, Plaintiff allegedly heard and felt his neck "pop," and Plaintiff
13 assertedly experienced severe consequent pain (id.). Throughout the
14 alleged beating and choking, Plaintiff reportedly was still wearing
15 leg and arm restraints (id.).
16

17 Plaintiff allegedly suffered injuries to his neck, ribs, chest,
18 wrists and ankles, as well as emotional and psychological injuries
19 (id., p. 14). Medical personnel identified as "Doe" Defendants
20 allegedly did not provide immediate medical care to Plaintiff,
21 purportedly by failing to summon Plaintiff to receive those services
22 despite supposedly having knowledge of Plaintiff's need for medical
23 care (id.).
24

25 The Complaint contains two claims for relief. Claim One asserts
26 that Defendants subjected Plaintiff to "cruel and unusual punishment
27 by means of unnecessary use of force without due process," assertedly
28 in violation of the First, Eighth and Fourteenth Amendments (id., p.

1 5). Claim Two alleges that various "Doe" Defendants assertedly denied
2 Plaintiff medical care by purportedly exhibiting deliberate
3 indifference to an allegedly serious medical need (id., p. 14).
4 Plaintiff seeks declaratory relief, compensatory and punitive damages,
5 the costs of suit and attorney's fees (Complaint, p. 6).

7 DISCUSSION

8
9 Plaintiff may not sue the Warden or any other supervisor under
10 section 1983 on a theory of respondeat superior. See Ashcroft v.
11 Iqbal, 556 U.S. 662, 676 (2009) ("Government officials may not be held
12 liable for the unconstitutional conduct of their subordinates on a
13 theory of *respondeat superior*"). A supervisor "is only liable for his
14 or her own misconduct," and is not "accountable for the misdeeds of
15 [his or her] agents." Id. at 677. Mere knowledge of a subordinate's
16 alleged misconduct is insufficient. Id.

17
18 A supervisor may be held liable in his or her individual capacity
19 "for [his or her] own culpable action or inaction in the training,
20 supervision or control of [his or her] subordinates." Watkins v. City
21 of Oakland, Cal., 145 F.3d 1087, 1093 (9th Cir. 1998) (quoting Larez
22 v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991)). To state
23 a claim against any individual defendant, a plaintiff must allege
24 facts showing that the individual defendant participated in or
25 directed the alleged violation, or knew of the violation and failed to
26 act to prevent it. See Barren v. Harrington, 152 F.3d 1193, 1194 (9th
27 Cir. 1998), cert. denied, 525 U.S. 1154 (1999) ("A plaintiff must
28 allege facts, not simply conclusions, that show that an individual was

1 personally involved in the deprivation of his civil rights.").

2
3 Plaintiff's conclusory allegations against Warden Valenzuela do
4 not suffice under these standards. See Ashcroft v. Iqbal, 556 U.S. at
5 678, 686 (plaintiff must allege more than an "unadorned, the-
6 defendant-unlawfully-harmed me accusation"; a pleading that "offers
7 labels and conclusions or a formulaic recitation of the elements of a
8 cause of action will not do") (citations and quotations omitted).
9 Plaintiff also does not allege facts showing Defendant Cortez'
10 personal involvement in the allegedly excessive force.

11
12 Plaintiff's deliberate indifference claim is also insufficient.
13 Prison officials can violate the Constitution if they are
14 "deliberately indifferent" to an inmate's serious medical needs. See
15 Farmer v. Brennan, 511 U.S. 825, 834 (1994); Estelle v. Gamble, 429
16 U.S. 97, 104 (1976). To be liable for "deliberate indifference," a
17 jail official must "both be aware of facts from which the inference
18 could be drawn that a substantial risk of serious harm exists, and he
19 must also draw the inference." Farmer v. Brennan, 511 U.S. at 837.
20 "[A]n official's failure to alleviate a significant risk that he
21 should have perceived but did not, while no cause for commendation,
22 cannot . . . be condemned as the infliction of punishment." Id. at
23 838. Allegations of negligence do not suffice. Estelle v. Gamble,
24 429 U.S. at 105-06; Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir.
25 2000) (en banc). Thus, inadequate treatment due to accident, mistake,
26 inadvertence, or even gross negligence does not amount to a
27 constitutional violation. Estelle v. Gamble, 429 U.S. at 105-06;
28 Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004). "[A]n

1 official's failure to alleviate a significant risk that he should have
2 perceived but did not, while no cause for commendation, cannot . . .
3 be condemned as the infliction of punishment." Farmer v. Brennan, 511
4 U.S. at 838.

5
6 Plaintiff's conclusory allegations that unidentified medical
7 personnel denied Plaintiff unspecified medical services do not suffice
8 under these standards. See Ashcroft v. Iqbal, 556 U.S. at 678, 686;
9 Shelton v. Chorley, 487 Fed. App'x 388, 389 (9th Cir. 2012)
10 (conclusory allegations of deliberate indifference to medical needs
11 insufficient). Furthermore, Plaintiff's vague allegations that
12 "Defendants" purportedly provided inadequate medical care, without
13 specifying each Defendant's alleged action(s) or inaction(s), are
14 insufficient. See Barren v. Harrington, 152 F.3d at 1194; E.D.C.
15 Technologies, Inc. v. Seidel, 2016 WL 4549132, at *9 (N.D. Cal.
16 Sept. 1, 2016) ("Courts consistently conclude that undifferentiated
17 pleading against multiple defendants is improper") (citations,
18 internal brackets and quotations omitted).

19
20 Finally, as a pro se litigant, Plaintiff cannot recover
21 attorney's fees in a civil rights action. Kay v. Ehrler, 499 U.S.
22 432, 435 (1991).

23 24 CONCLUSION AND ORDER

25
26 The Complaint is dismissed with leave to amend. If Plaintiff
27 still wishes to pursue this action, he is granted thirty (30) days
28 from the date of this Order within which to file a First Amended

1 Complaint. While the Court does not necessarily deem insufficient all
2 of Plaintiff's allegations, the Court does require that any First
3 Amended Complaint be complete in itself and not refer in any manner to
4 the prior Complaint. Plaintiff may not add Defendants without leave
5 of court. See Fed. R. Civ. P. 21. Failure to file timely a First
6 Amended Complaint may result in the dismissal of this action.

7
8 DATED: May 19, 2017

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12 _____
ANDREW J. GUILFORD
UNITED STATES DISTRICT JUDGE

13
14 PRESENTED this 30th day of
15 March, 2017, by:

16
17 _____
/s/
18 CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE